

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

**ROBERT MARTIN
ADC #164621**

PLAINTIFF

v.

Case No. 4:20-cv-01361-LPR-JJV

**FLUD, Administrator,
Lonoke County Detention Center; et al.**

DEFENDANTS

ORDER

The Court has received and reviewed the Proposed Findings and Recommendations (“the Recommendation”) submitted by United States Magistrate Judge Joe J. Volpe. (Doc. 5). Plaintiff Robert Martin has not filed any objections. After careful consideration, the Recommendation is adopted in part and rejected in part.

First, the Court adopts the portion of the Recommendation that recommends dismissal without prejudice of Mr. Martin’s claims regarding the distribution of medicine without a medical license.

Second, the Court adopts the portion of the Recommendation that recommends dismissal without prejudice of Mr. Martin’s negligence claim against Defendant Manes regarding the alleged afternoon distribution of Mr. Martin’s morning medicine on one occasion. In addition to what Judge Volpe said on this point, the Court also notes that Mr. Martin did not allege that the incorrect timing of the medicine distribution was intentional.¹

Third, the Court adopts the portion of the Recommendation that recommends dismissal without prejudice of all the official capacity claims.

¹ The Recommendation correctly permitted Mr. Martin’s claim to proceed against Defendant Manes for deliberate indifference to medical needs for marking off another inmate’s name from a medication and giving that medication to Mr. Martin.

Fourth, the Court rejects the portion of the Recommendation to dismiss Defendants Staley, Flud, and Gibson. The Recommendation characterizes Mr. Martin's claim as being based on the Defendants telling Mr. Martin that he would have to pay for the hospital visit rather than directly refusing to take him. (*Id.* at 5). The Recommendation also states that Mr. Martin "does not explain why he needed to go to the hospital on October 29, 2020." (*Id.*). However, in the context of the Complaint as a whole and reading it liberally, the Court understands the Complaint to say that Mr. Martin was again complaining of chest pains on October 29, 2020 and the Defendants refused to take him to the hospital.

Mr. Martin described that Defendants Staley, Flud, and Gibson told him "they wasn't going to send [him] to the hospital," but if they did, then Mr. Martin would have to pay for it. (Doc. 2 at 5-6). Mr. Martin responded that he had insurance. (*Id.*). This indicates that Mr. Martin was expressing his willingness to absorb the cost if the Defendants would agree to take him to the hospital. The Court understands Mr. Martin to allege that he complained of chest pain and Defendants Staley, Flud, and Gibson refused to take him to the hospital despite his willingness to pay for medical care with his insurance. In my view, this claim of deliberate indifference survives screening.

IT IS THEREFORE ORDERED that:

1. Mr. Martin's claims regarding the distribution of medicine without a medical license are dismissed without prejudice.
2. Mr. Martin's negligence claims are dismissed without prejudice.
3. Mr. Martin's official capacity claims are dismissed without prejudice.
4. Defendants Flud, Staley, and Gibson are not dismissed from this lawsuit. The deliberate indifference claim against them (in their personal capacities) survives screening and

should be served. The Court orders the Clerk of the Court to prepare Summons for Defendants Flud, Staley, and Gibson. The United States Marshal shall serve a copy of the Complaint (Doc. 2), Summons, and this Order on each Defendant (Flud, Staley, and Gibson) without prepayment of fees and costs or security therefore. Service for Defendants should be attempted through the Lonoke County Detention Center, 440 Dee Dee Lane, Lonoke, Arkansas 72086.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from this Order would not be taken in good faith.

DATED this 8th day of January 2021.



LEE P. RUDOFSKY
UNITED STATES DISTRICT JUDGE